



James J. Campbell  
Commissioner

# *The Commonwealth of Massachusetts*

## *Department of Industrial Accidents*

*600 Washington Street  
Boston, Mass. 02111*

CIRCULAR LETTER NO. 263

TO: Interested Parties  
FROM: James J. Campbell, Commissioner *JJC*  
DATE: February 7, 1992  
RE: New Workers' Compensation Law

We have enclosed a number of documents that will help you to interpret and implement the provisions of Chapter 398 of the Acts of 1991, the new workers' compensation amendments.

1. An overview of the new law.
2. Two interim lump sum forms.
3. The emergency regulations currently in effect.
4. New § 36 guidelines consistent with the new law regarding disfigurements.
5. A form we have approved for reporting employee earnings to insurers.
6. The form to be used by parties who agree to refer their disputes to an independent arbitrator.

I hope this is helpful.

JJC:dac

## **AN ACT RELATIVE TO FAIR AND EFFECTIVE COMPENSATION OF INJURED WORKERS**

### **OVERVIEW OF THE NEW LAW**

The major components of the new workers' compensation law proposal are as follows:

- o a benefit structure in line with that of our neighboring states and other industrial states;
- o collective bargaining for additional benefits or alternative dispute resolution procedures;
- o reasonable attorneys' fees that create the proper incentives for responsible lawyering;
- o a streamlined, less adversarial dispute resolution process to be overseen by judges selected pursuant to much stricter standards and who must report to a senior judge;
- o state-of-the-art procedures and programs designed to identify those abusing and defrauding the system and penalties that suit the offenses, including imprisonment where appropriate;
- o medical protocols to be developed and enforced expeditiously by health care professionals;
- o insurance company cost-containment requirements and incentives to be created and enforced by a significantly strengthened Division of Insurance; and
- o rate-based incentives for workplace safety and loss control programs.

### **BENEFITS FOR SERIOUSLY AND LESS SERIOUSLY INJURED EMPLOYEES**

The new workers' compensation law creates a benefit structure that provides 156 weeks of temporary total benefits, 260 weeks of partial benefits, and a cap on temporary total and partial benefits combined at 364 weeks for less seriously injured employees and at 520 weeks for employees with specific permanent disabilities. The current method of calculating benefits is also changed. The law provides that instead of receiving two-thirds of the employee's wage prior to the injury, the employee on temporary total or partial disability will receive 60% of those wages. In addition, employees on partial disability would be eligible only for 75% of the weekly benefits they could receive while out on temporary total. No COLA's will be available for those on partial.

Employees with permanent and total disabilities will continue to receive 2/3 of their gross pre-injury wages up to the maximum. Annual COLA's are now capped at 5%, however. The first five days of any disability would not be compensable unless the employee's disability extends for 21 days. (NO EMPLOYEES INJURED BEFORE DECEMBER 24TH WILL BE AFFECTED BY THESE BENEFIT REDUCTIONS.)

The burial benefit has been increased from \$2000 to \$4000. To ease the transition back into the workforce, two years of vocational rehabilitation are provided, enough to learn new skills or even get an associates degree. Also, generous protective "light duty" provisions are created to assure that any light duty offered by an employee is suitable for the employee or the employee will not suffer penalties for refusing it. If an employee drops out of a rehab program without good cause, he or she could be subject to a 15% reduction in weekly benefits.

#### **THE "WORK RELATEDNESS" REQUIREMENT**

The new workers' compensation law addresses the issue of work relatedness by requiring that where a disability results from mental stress, an event or series of events must be the predominant contributing cause of the disability and not just be a minor contributant.

In addition, where the employee brought to work a pre-existing condition to cause or prolong a disability, the work-related injury must be a major contributing cause of this disability or continued need for treatment. These changes will relieve the employer/carrier community from bearing the full burden of wage loss and medical care for employees with pre-existing conditions when the workplace played at most a minor role.

#### **CHANGES IN DISPUTE RESOLUTION**

A new senior judge position has been created to oversee the Division of Dispute Resolution, and that position has now been filled. The law requires the senior judge to have been an administrative judge or administrative law judge at the Department for at least two years, have demonstrated managerial expertise, and excellent writing skills. The senior judge is responsible for judicial productivity, training and evaluation.

Judicial selection procedures for all judges have been tightened to ensure that judges are qualified professionals. Precise standards have been developed including:

- (1) basic knowledge of human anatomy,
- (2) skills in fact finding, and

- (3) a bachelor of arts degree or four years of experience in a position that requires writing skills to be a major job responsibility.

Judges are to be screened by an expanded nominating panel that will include the secretary of labor, the secretary of economic affairs, the governor's chief legal counsel, the commissioner of the Department of Industrial Accidents (DIA), the senior judge, and six private individuals. Those candidates nominated by the governor are to be rated by the advisory council as highly qualified, qualified, or unqualified. To address the case backlog quickly, six temporary trial level judges will be appointed. These positions will be appointed for three year terms, to expire in February, 1995. Also, two new appellate level administrative law judges will be appointed, thereby increasing the number of administrative law judges to six, and allowing two appeals panels to function at once.

The process has been streamlined and made less adversarial in a number of ways.

- o The unilateral pay-without-prejudice period has been extended to 180 days with possible extensions up to one year.
- o Voluntary arbitration has been made available to all parties. For those who cannot afford an arbitrator, all conciliators at the Department of Industrial Accidents will be made available to be arbitrators at no cost to the parties.
- o Where practicable, the same administrative judge will be required to hear all cases involving the same alleged injury. This will prevent forum shopping.
- o Motion sessions will be provided by statute to expedite claims regarding fraud, illegal discontinuances, catastrophic injuries and denial of medical treatment.
- o A modified last-best-offer arbitration procedure at the conference is provided for resolving disputes. This will require the parties to submit offers regarding compensation rates prior to the conference. The judges' conference orders will be required to reflect one of these offers unless written explanations are appended as to why each was unreasonable. This provision is intended to make sensible demands early in the process, and should facilitate settlements and informed decision making by judges at the conference stage.

- o The waiting period for requesting an impartial physician is reduced from 90 days to 60 days.
- o In those cases involving disability that still must go to a full hearing, the new law requires the use of a single expert physician - either agreed upon by the parties or chosen by the Department. The report of this expert would be admissible and both parties would have the right to cross-examine. Additional medical testimony would be allowed only where the judge finds that more is truly needed. The use of impartial doctors is thought by a number of workers' compensation authorities to be the single most important method of reducing litigation. The use of a single, impartial physician should make hearings faster, more reliable, and less likely to occur at all.
- o The penalties on insurers who fail to make timely payment or notification are restructured so that employees with non-compensable claims cannot receive large payments. 10% interest will be payable to employees who prevail at the conference level.
- o The law restructures attorneys' fees so that claimants' attorneys are paid for their work, but not encouraged to engage in litigious behavior. Employees will be required to pick up some of the cost of their legal services when they receive a cash award.
- o Finally, penalties are assessed for filing frivolous motions. In this way, all advocates are given a new set of incentives to be reasonable.

#### **FRAUD**

The new Insurance Fraud Bureau will investigate questionable acts by attorneys, doctors, claimants, employers, insurance companies and any other participant in the workers' compensation system. In order to accomplish the investigation, the new act provides for wide investigatory powers including the power of subpoena to the Department of Revenue, the Department of Welfare and many other agencies throughout the Commonwealth. Additionally, the Bureau will work in conjunction with an assistant attorney general who will exclusively prosecute workers' compensation fraud.

There is now a maximum sentence of up to five years in prison, fines ranging from one thousand to ten thousand dollars, plus a provision for full restitution to aggrieved parties. The law also provides for the imposition of civil penalties, and, where the violator is a professional, the matter is referred to either the board of bar overseers or the appropriate board of registration.

Finally, there are state-of-the-art prohibitions against leasing companies or other employers who intentionally misclassify employees in order to avoid full payment of premiums, and law firms and health care organizations who use people to personally encourage or coerce employees to file claims.

#### **LUMP SUMS**

The lump sum process has also been fundamentally transformed. The goals were threefold:

- (1) to minimize abusive settlements;
- (2) to ensure that those who are affected by lump sum settlements are given the power to prevent settlements that are not in their best interest; and
- (3) to ensure that the already congested system is not further backlogged.

These goals are achieved by requiring that employers whose rates are affected by a lump sum settlement be given the right to sign-off on the settlement. This assures that all settlements are scrutinized by the party that ultimately has to pay, and assures that excessive settlements are not just agreed to by insurers and claimants who merely pass the cost onto employers. With these provisions, Massachusetts will now have one of the strictest review processes in the country for lump sum settlements. The approval process has been streamlined with the elimination of mandatory lump sum counselling and with the authority to approve settlements given to conciliators as well as judges.

#### **MEDICAL PROTOCOL AND ACCESS**

The Department of Industrial Accidents will be responsible for the creation, by medical experts, of a series of medical protocols. These protocols will include detailed descriptions of what constitutes appropriate treatment of the normal types of workplace injuries and diseases. These will be presumed to be the only treatments that insurers will be required to pay for. When a dispute arises, either party can request an impartial examination by a physician appointed by the Department. The finding of this doctor will bind the parties until the occurrence of any future proceeding, and will be given extra weight at any hearing on the issue. These sections of the new law will both eliminate court battles on necessary treatment and reduce medical costs by setting sensible standards for appropriate care. Employers will be allowed to set up preferred provider networks. Employees will be required to use a provider in this network for their first

scheduled visit. If they are unsatisfied, they may use other specialists. This should improve access as well as reduce costs.

The cost containment provisions establish loss control incentives for those employers that could significantly benefit from the adoption of a program to control workers' compensation costs. These employers, in cooperation with their insurers, would establish safety committees, prepare plans for medical evaluation and treatment including immediate post-injury offsite care, and provide reasonable accommodation for injured workers to return to work.

Additional cost control will be accomplished by revamping the incentives for insurers to monitor costs in the assigned risk pool, as well as by depopulating the pool itself. Under the law, the Commissioner of Insurance will hold an immediate hearing to address the problems of the pool. The Commissioner is given broad authority to restructure the pool. In addition, the insurers that service the pool will be given fee-based incentives to lower losses of insureds, which should have the effect of lowering the pool's \$400 million deficit. Decreasing the number of risks in the pool and the deficit created by those risks will go a long way toward restoring the health of the workers' compensation insurance market.

The law gives the Commissioner of Insurance additional resources to implement these reforms. The Commissioner is provided with sufficient technical staff expertise for developing and monitoring insurer cost containment programs and employer loss control standards, analyzing and restructuring the assigned risk pool, and scrutinizing insurance industry rate filings.

The additional personnel will also help to determine premium reductions for small deductible policies which the statute creates as an option for employers. These deductible policies, offered for the first time in Massachusetts, will enable small businesses to self-insure for each claim up to the chosen deductible amount. These deductible policies should encourage additional cost control by employers particularly in the case of accident prevention, since employers will have a more direct financial stake in avoiding claims than under the current system.



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## Department of Industrial Accidents

600 Washington Street  
Boston, Mass. 02111

### EMPLOYEE EARNINGS REPORT

PLEASE TYPE OR PRINT:

Employee Name	Social Security #	Date of Injury
Employee Mailing Address	Employee Residential Address (If diff. from mailing address)	
Employee's Attorney's Name and Address	DIA Board #	Date of Birth

In accordance with M.G.L. ch 152 Sec. 11D

Any employee entitled to receive weekly compensation shall have an affirmative duty to report to the insurer all earnings, including wages or salary from self-employment.

Failure to report any earnings may subject the employee to civil or criminal penalties.

Failure to return this form within 30 days of the insurer's request may result in the insurer's suspension of the employee's weekly benefits.

Week No	Year: Week Ending Month Day	Gross Amount Before Taxes; or Unemployment Insurance Payment
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		

Week No	Year: Week Ending Month Day	Gross Amount Before Taxes; or Unemployment Insurance Payment
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
TOTAL:		

Name/Address of Employer or Other Payor of Wages, Commissions, U.I. Benefits, Etc.

☐ (X If Appropriate)

I have not received earnings for any period  
I was entitled to receive Workers' Compensation Benefits.

If more than one payor please list additional names and addresses on back.

Any incarcerations pursuant to a felony or misdemeanor conviction during time period claiming Workers' Compensation Benefits?

☐ Yes ☐ No

If Yes, please specify dates: / / - / /

If more than one incarceration please list additional dates on back.

Employee's Signature:

Date (MM/DD/YY): / /

Employee's Attorney's Signature:

Date (MM/DD/YY): / /

\*\*\*Above information presented and signed under pains and penalties of perjury.\*\*\*





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600 Washington Street  
Boston, Mass. 02111

ADDENDUM TO LUMP SUM SETTLEMENT AGREEMENT  
PURSUANT TO c.398, s.75 OF THE ACTS OF 1991,  
EFFECTIVE DECEMBER 24, 1991  
VOCATIONAL REHABILITATION STATUS

Employee Name: \_\_\_\_\_ Board #: \_\_\_\_\_

Written consent of the Office of Education and Vocational Rehabilitation is not required as a condition precedent to the validity of the lump sum agreement where:

PLEASE CHECK ONE:

- ☐ No determination has been made with respect to the employee's suitability for vocational rehabilitation pursuant to §30G.
- ☐ The employee has been found unsuitable by the Office of Education and Vocational Rehabilitation for vocational rehabilitation services pursuant to §30G.
- ☐ The employee has returned to continuous employment for a period of six or more months.
- ☐ The employee has completed an approved rehabilitation plan.

Signed, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

SIGNATURE

ADDRESS

CLAIMANT \_\_\_\_\_

CLAIMANT'S COUNSEL \_\_\_\_\_

INSURER'S COUNSEL \_\_\_\_\_

Where the employee has been found suitable for vocational rehabilitation services and has not returned to continuous employment for a period of six or more months or completed an approved rehabilitation plan, the Office of Education and Vocational Rehabilitation may nevertheless consent in writing to the lump sum, or an administrative judge or administrative law judge, by order or decision may authorize such agreement.

Consented To: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of Education and Vocational Rehabilitation

Order/Decision: \_\_\_\_\_  
Administrative Judge/Administrative Law Judge

2/27/92



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## *Department of Industrial Accidents*

*600 Washington Street  
Boston, Mass. 02111*

I, \_\_\_\_\_ sole proprietor/partner/corporate  
officer of \_\_\_\_\_ Co. of \_\_\_\_\_  
(city)  
\_\_\_\_\_, experience modified insured of  
(state)  
\_\_\_\_\_ Co., hereby consent to the payment of a lump  
(insurer)  
sum settlement in the gross amount of \$ \_\_\_\_\_ in the case of  
\_\_\_\_\_. The terms of such settlement are more  
(claimant)  
fully set forth in the attached lump sum agreement.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_,  
pursuant to the provisions of Section 48 of Chapter 152 of the General  
Laws of Massachusetts as most recently amended by Section 74 of  
Chapter 398 of the Acts of 1991.

\_\_\_\_\_



**THE COMMONWEALTH OF MASSACHUSETTS**

*Office of the Secretary of State*

**Regulation Filing** *To be completed by filing agency*

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CHAPTER NUMBER: 452 CMR 100

CHAPTER TITLE: Adjudicatory Rules

AGENCY: Department of Industrial Accidents

**SUMMARY OF REGULATION**

*State the general requirements and purposes of this regulation:*

To amend certain provisions and reserve offers consistent with changes to the Worker's Compensation Act made pursuant to St. 1991, c. 398.

REGULATORY AUTHORITY: M.G.L. c. 152. s.5

AGENCY CONTACT: Stephen Linsky, Esq. PHONE: (617) 727-4900x.358

ADDRESS: 600 Washington Street, Boston, MA 02111

**Compliance with M.G.L. c. 30A**

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**EMERGENCY ADOPTION**

*If this regulation is adopted as an emergency regulation, state the nature of the emergency.*

Reforming the Workers' Compensation Act.

St. 1991, c. 398 was made effective on December 24th, 1991

upon its signing by the Governor. Accordingly, emergency regulations are necessary in order to effectuate the new act and preserve the general welfare.

**PRIOR NOTIFICATION AND/OR APPROVAL**

*If prior notification to and/or approval of the Governor, legislature or others was required, list each notification, approval and date, including notice to the Local Government Advisory Commission:*

**PUBLIC REVIEW**

*Was notice of the hearing or comment period filed with the Secretary of State published in appropriate newspapers and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period?*

Yes ☐ Date of public hearing or comment period: \_\_\_\_\_

Insert into 452 CMR 1.02:

Advocate on Behalf of Any Party, as used in M.G.L. c. 152, § 10B, shall mean any person representing a party in any proceeding before the Industrial Accident Board or Reviewing Board, except where the sole consideration for the representation of any such party is in the form of regular wages or salary from employment with a self-insurer, labor organization, employee association, the Commonwealth or any of its political subdivisions, or any entity which receives no consideration in the form of premiums or fees for services relating to the representation of parties before the Industrial Accident Board or Reviewing Board.

Amount Payable to the Employee Within the First Month from the Date of the Voluntary Payment, Order or Decision, as used in M.G.L. c. 152, s. 13A(10), shall mean any compensation due the employee under the terms of the voluntary payment, order or decision pursuant to M.G.L. c. 152, s. 36 or s. 36A and any future weekly benefits pursuant to M.G.L. c. 152 due the employee for the first thirty days subsequent to the date of the execution of a voluntary payment or the issuance of an order or decision.

Cash Award, as used in M.G.L. c. 152, s. 13A(10), shall mean any specific compensation benefits payable under M.G.L. c. 152, s. 36 or s. 36A and any weekly benefits payable under M.G.L. c. 152 of an amount that exceeds the weekly amount paid the employee prior to the voluntary payment, order or decision.

Experience Modified Insured, as used in M.G.L. c. 152, s. 48 (1), shall mean any named employer in a proposed lump sum settlement which has an experience modification in effect at the time of the lump sum settlement that, under the terms of a rating plan approved by the commissioner of insurance, could be affected by the proposed lump sum settlement.

Hospitalization Expenses, as used in M.G.L. c. 152, s. 13(1), shall mean any charges for in-patient hospital services adjudged compensable under M.G.L. c. 152.

Mid-term Notice of Cancellation, as used in M.G.L. c. 152, s. 55A, shall mean any notice of mid-term policy discontinuance initiated by the insurer.

One Hundred Eighty (180) Day Period, as used in M.G.L. c. 152, s. 8(1) and 8(6), shall mean the one hundred and eighty (180) day period beginning on the commencement of disability.

Setting in Which the Service is Administered, as used in M.G.L. c. 152, s. 13(1), shall mean the physical location, including the jurisdiction and the type of facility, in which any health care service other than in-patient hospital service is administered.

Strike the definitions, within 452 CMR 1.02, of:

"Sixty (60) Day Period"

"Benefits"

"Knowledge from any Source that Such Benefits are Due"

"Payment of Benefits in a Timely Fashion"

"Written Claim for Benefits"

"Termination of Benefits"

Reserve 452 CMR 1.03 (1) and (2).

Amend 452 CMR 1.03 (3) by deleting the first sentence and replacing the first sentence of subsection (a) with the following:

(a) "An employer who is aggrieved by an assessment of a fine imposed for a violation under the provisions of M.G.L. c. 152, s. 6, may seek an administrative review by the director of claims administration or his or her designee within thirty (30) days of the issuance of the fine and shall include any relevant documentation with such request."

Reserve 452 CMR 1.04 (2).

Reserve 452 CMR 1.05 (1), (4), (5), (6), (7)

Reserve 452 CMR 1.06 in its entirety.

Amend 452 CMR 1.08 (1) by replacing the term "within the office of claims administration" in line 1 with "within the division of dispute resolution".

In 452 CMR 1.09 (1)(d) and (2) delete the words "division of dispute resolution" and insert "industrial accident board".

Reserve 452 CMR 1.14 (2) and (3).

Reserve 452 CMR 1.19(4)(a) and (c)

Reserve 452 CMR 1.22 (1), (2), (3) and (4).

GUIDE FOR CALCULATING LOSS-OF-FUNCTION  
BENEFITS FOR INJURIES OCCURRING ON OR  
AFTER DECEMBER 24, 1991

EYES

SECTION 36, PARAGRAPHS (a), (b) & (c)

- |   |             |
|---|-------------|
| a. Total loss of vision, or reduction to 20/70 of one eye with glasses.<br>Loss of single binocular vision.   | SAWW x 39   |
| b. Total loss of vision, or reduction to 20/70 of both eyes with glasses.   | SAWW x 96   |
| c. For any correctible permanent but partial reduction in acuity or field of vision, an amount in proportion to the total loss of use or the reduction to 20/70 of normal vision. |             |
| 20/30   | SAWW x 10   |
| 20/35   | SAWW x 12.5 |
| 20/40   | SAWW x 14.5 |
| 20/45   | SAWW x 19.5 |
| 20/50   | SAWW x 24.5 |
| 20/60   | SAWW x 34.5 |
| 20/70   | SAWW x 39   |

EARS

Section 36, paragraph (d)

- |                                     |           |
|-------------------------------------|-----------|
| d. Total loss of hearing of one ear | SAWW x 29 |
| Total loss of hearing of both ears  | SAWW x 77 |

ARMS

Section 36, paragraph (e)

- |  |           |
|--|-----------|
| For amputation or permanent loss of use - major arm. | SAWW x 43 |
| For amputation or permanent loss of use - minor arm  | SAWW x 39 |
| For amputation or permanent loss of use - both arms. | SAWW x 96 |
| Elbow joint - 65% of arm      shoulder - 60% of arm  |           |

GUIDE FOR CALCULATING LOSS-OF-FUNCTION  
BENEFITS FOR INJURIES ON OR  
AFTER DECEMBER 24, 1991

VARIOUS LOSSES OF FUNCTION

Section 36, Paragraph (j)

<u>Spine</u>	dorsal, lumbar sacrum total loss	SAWW x 32
	cervical - 75% of maximum	SAWW x 24
<u>Equilibrium</u>	Total loss of ability to stand	SAWW x 21
<u>Lung</u>	Loss of one lung	SAWW x 16
<u>Kidney</u>	Loss of one kidney	SAWW x 16
<u>Language comprehension</u>	Total loss	SAWW x 32
<u>Sexual function</u>	Total loss	SAWW x 10
<u>Taste or smell</u>	Total loss of either	SAWW x 8 (both = 16x)
<u>Spleen</u>	Loss of spleen	SAWW x 10
<u>Urinary or bowel</u>	Total loss of either	SAWW x 29
<u>Teeth</u>	Loss of each	SAWW x 1

Note: This list is not intended to be exhaustive of the functional losses compensable under § 36(1)(j).

THE AGGREGATE PAYMENT FOR ALL LOSSES OF  
FUNCTION UNDER SECTION 36(1)(J) MAY NOT  
EXCEED SAWW X 80

GUIDELINES FOR DISFIGUREMENTS OTHER THAN SCARS FOR INJURIES  
OCCURRING ON OR AFTER DECEMBER 24, 1991. MAXIMUM DISFIGUREMENTS  
AWARD= \$15,000

	<u>FACE</u>	<u>HAND</u>
VERY SLIGHT	1x - 6x	1x- 4x
SLIGHT	6½x - 12½x	4½x - 8½x
MODERATE	13x - 19x	9x - 13x
SEVERE	19½x - 26½	13½ - 17½x
VERY SEVERE	27x - 32x	18x - 22x
		(In no instance shall amounts for disfigurements to fingers exceed allowances listed for amputations)
	<u>NECK &amp; HEAD (OTHER THAN FACE)</u>	<u>LIMP</u>
VERY SLIGHT	1x - 4x	1x - 6x*
SLIGHT	4½x - 8½x	6½ - 12x*
MODERATE	9x - 13x	13x - 19x*
SEVERE	13½x - 17½x	19½x - 26½x (crutches or walker)*
VERY SEVERE	18x - 22x	\$15,000 max. (wheelchair) *permanent need of a cane entitles one to 1½x more.

\* Amount payable is not to exceed \$15,000



APPLICABLE TO INJURIES OCCURRING  
ON AND AFTER DECEMBER 24, 1991  
MAXIMUM DISFIGUREMENTS AWARD = \$15,000

Disfigurement Awards For Partial  
Loss of Fingers

One phalanx of 2nd, 3rd, 4th or 5th finger = 50% of finger.  
Two phalanges of 2nd, 3rd, 4th or 5th finger = 90% of finger.  
One phalanx of thumb = 90% of thumb.

Three Examples

- EX. 1. If someone loses half a thumb and all of 2nd and 3rd fingers,  
then  $90\% + 100\% + 100\%$  divided by 3 = 96.7% of 22 X SAWW  
(from line 7 on the following page)
- EX. 2. If someone loses one phalanx of 2nd finger, 2 phalanges of a  
3rd finger  
and all of 4th finger, then  $50\% + 90\% + 100\% = 240\%$  divided by 3 =  
80% of 22 X SAWW (from line 19)
- EX. 3. If someone loses one phalanx of each of 2nd and 3rd fingers,  
then  $50\% + 50\% = 100\%$  divided by 2 = 50% of 16.5 X SAWW (from line 22).

Disfigurement Awards for  
Amputations of Toes or Parts Thereof

Large toe	SAWW x 3
One phalanx thereof	SAWW x 2
Other toes	SAWW x 2
One phalanx thereof	SAWW x 1

## HANDS & WRIST

### Section 36, Paragraph (f)

For amputation or permanent loss of  
use - major hand. SAWW x 34

For amputation or permanent loss of  
use - minor hand. SAWW x 29

For amputation or permanent loss of  
use - both hands. SAWW x 77

## FINGERS

Thumb-40% of hand    Ring-10% of hand    One phalanx of thumb-75%  
Index-25% of hand    Little-5% of hand    One phalanx of finger-45%  
Middle-20% of hand    Two phalanges of finger-80%

## LEGS

### Section 36, Paragraph (g)

For amputation or permanent loss of  
use - either leg. SAWW x 39

For amputation or permanent loss of  
use - both legs. SAWW x 96

Knee - 50% of leg  
Hip - 25% of leg

## FEET & ANKLES

### Section 36 Paragraph (h)

For amputation or permanent loss of  
use - either foot at any point above  
ankle joint. SAWW x 29

For amputation or permanent loss of  
use - both feet at any point above  
ankle joints. SAWW x 68

Large toe - 18% of foot (first joint - 13.5% of foot)  
other toes - 5% of foot (first joint - 2% of foot)

GUIDE FOR CALCULATING PURELY SCAR-BASED DISFIGUREMENTS  
FOR INJURIES OCCURRING ON OR AFTER DECEMBER 24, 1991  
MAXIMUM DISFIGUREMENTS AWARD = \$15,000

Section 36, Paragraph (k)

FACE (32 X SAWW)

Linear scar, no disc.	-	2 X SAWW per inch
Linear scar, with disc.	-	3.25 X SAWW "
Wide scar, no disc.	-	3.5 X SAWW "
Wide scar, with disc.	-	6.5 X SAWW "

HAND (22x SAWW)

Linear scar, no disc.	-	1 X SAWW per inch
Linear scar, with disc.	-	1.75 X SAWW "
Wide scar, no disc.	-	2 X SAWW "
Wide scar, with disc.	-	2.5 X SAWW "

(In no instance shall amount for disfigurements to fingers exceed allowances for amputations.)

NECK OTHER THAN FACE (22x SAWW)

Linear scar, no disc.	-	1 X SAWW per inch
Linear scar, with disc.	-	1.5 X SAWW "
Wide scar, no disc.	-	1.75 X SAWW "
Wide scar, with disc	-	2 X SAWW "

SCHEDULE OF PAYMENTS FOR DISFIGUREMENT  
FOR THE AMPUTATION OF A HAND, FINGERS,  
OR PARTS THEREOF

The numerals 1, 2, 3, 4, 5 shall designate respectively the following:

1. Thumb
2. Second or Index
3. Third or Middle
4. Fourth or Ring
5. Fifth or Little

Fingers and Combinations						TOTAL HAND 22 X SAWW
2	1	2	3	4	5	22 X SAWW
3	1	2	3	4		22 X SAWW
4	1	2	3		5	22 X SAWW
5	1	2		4	5	22 X SAWW
6	1		3	4	5	22 X SAWW
7	1	2	3			22 X SAWW
8	1	2		4		22 X SAWW
9	1	2			5	22 X SAWW
10	1		3		5	22 X SAWW
11	1		3		5	22 X SAWW
12	1			4	5	22 X SAWW
13	1	2				22 X SAWW
14	1		3			22 X SAWW
15	1			4		22 X SAWW
16	1				5	22 X SAWW
17	1					16.5X SAWW
18		2	3	4	5	22 X SAWW
19		2	3	4		22 X SAWW
20		2	3		5	22 X SAWW
21		2		4	5	22 X SAWW
22		2	3			16.5X SAWW
23		2		4		16.5X SAWW
24		2			5	16.5X SAWW
25		2				7.5 X SAWW
26			3	4	5	22 X SAWW
27			3	4		16.5X SAWW
28			3		5	16.5X SAWW
29			3			7.5 X SAWW
30				4	5	16.5X SAWW
31				4		7.5 X SAWW
32					5	7.5 X SAWW



James J. Campbell  
Commissioner

# *The Commonwealth of Massachusetts*

1/28/92

## *Department of Industrial Accidents*

*600 Washington Street  
Boston, Mass. 02111*

### AGREEMENT TO REFER A CASE TO ARBITRATION

Employee's Name \_\_\_\_\_

Employee's Address \_\_\_\_\_

Employer's Name \_\_\_\_\_ Insurer's Name \_\_\_\_\_

DIA Board Number \_\_\_\_\_ Date of Claimed Injury \_\_\_\_\_

Name and Business Address of Arbitrator (If Known) \_\_\_\_\_

Arbitration Firm and Address \_\_\_\_\_

The undersigned hereby agree to abide by any finding(s) and award(s) of an independent arbitrator pursuant to the provisions of M.G.L. c. 152, §10B, and understand that all further proceedings within the DIA involving the above-captioned case shall be stayed until the DIA is in receipt of the award(s) of the arbitrator in all matters referred thereto or a notice signed by both parties that they wish to withdraw from arbitration.

The terms and conditions of the agreement to arbitrate, including the costs and fees payable by the parties are appended hereto.

Employee's Signature \_\_\_\_\_ Date \_\_\_\_\_

Insurer's Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_